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12 **Pro Hac Vice*

13 Attorneys for Plaintiff Edwardo Munoz
14 and the Class and Subclass

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

17 **Edwardo Munoz**, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 **7-Eleven, Inc.**, a Texas corporation,

22 Defendant.
23
24
25
26
27
28

Case No. 2:18-cv-03893-RGK-AGR

**PLAINTIFF'S PROPOSED PLAN
FOR DISSEMINATING THE CLASS
NOTICE**

Date: February 4, 2019

Time: 9:00 a.m.

Judge: Hon. R. Gary Klausner

Courtroom: 850

Complaint Filed: May 15, 2018

1 **I. Introduction**

2 On October 18, 2018, the Court granted certification under Federal Rule of
3 Civil Procedure 23 to the following Class and Subclass:

4 **Disclosure Class:** All persons in the United States who (1) from a date
5 [two years] prior to the filing of the initial complaint in this action to the
6 date notice is sent to the Disclosure Class; (2) applied for employment
7 with Defendant; (3) about whom Defendant procured a consumer report;
8 and (4) who were provided the same form FCRA disclosure and
9 authorization as the disclosure and authorization form that Defendant
10 provided to Plaintiff.

11 **California Subclass:** All members of the Disclosure Class who reside in
12 California.
13

14 (Dkt. 43.)

15 Counsel for Plaintiff Munoz and the Classes has met and conferred with
16 counsel for Defendant 7-Eleven and, after further conferral and consultation with
17 proposed class action administrators, Plaintiff proposes the following plan for
18 notifying the Classes.

19 **II. Proposed Notice Plan**

20 Discovery has revealed that there are approximately 57,000 members of the
21 Disclosure Class.¹ 7-Eleven has further indicated that it has addresses and telephone
22 numbers for these individuals.
23

24 As the Court is aware, due process requires that the Class be provided “the

25 ¹ 7-Eleven has indicated it will produce contact information for all 57,000 class members to a
26 third-party administrator approved by the Court. Class Counsel believe that the data should also be
27 made available to Munoz’s attorneys for use in this lawsuit. The Parties have met and conferred
28 regarding this dispute and will be bringing it to the Court’s attention via its established discovery
dispute procedures.

1 best notice that is practicable under the circumstances, including individual notice to
 2 all members who can be identified through reasonable effort.” Fed. R. Civ. P.
 3 23(c)(2)(B); *accord Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Silber*
 4 *v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Such safeguards ensure that notice to
 5 the class complies with both Rule 23 and the demands of due process. *Rannis v.*
 6 *Recchia*, 380 F. App’x 646, 650 (9th Cir. 2010). Adherence to these standards does
 7 not require that every individual class member receive *actual* notice—due process
 8 mandates only that the notice be “reasonably calculated under the circumstances to
 9 apprise [class members] of the pendency of the class action and give [them] a chance
 10 to be heard.” *Ross v. Trex Co., Inc.*, No. 09-CV-00670, 2013 WL 791229, at *1
 11 (N.D. Cal. Mar. 4, 2013). A notice plan that reaches at least 70% of the class is
 12 reasonable. FEDERAL JUDICIAL CENTER, *Judges’ Class Action Notice and Claims*
 13 *Process Checklist and Plain Language Guide* 3 (2010).

14 As for content, a class notice is satisfactory where it “generally describes the
 15 terms of the [case] in sufficient detail to alert those with adverse viewpoints to
 16 investigate and to come forward and be heard.” *Mendoza v. Tucson Sch. Dist. No. 1*,
 17 623 F.2d 1338, 1352 (9th Cir. 1980) *disapproved of on other grounds by Evans v.*
 18 *Jeff D.*, 475 U.S. 717, 106 S. Ct. 1531, 89 L. Ed. 2d 747 (1986); *see also* Alba Conte
 19 & Herbert B. Newberg, *Newberg on Class Actions* § 11:53 at 167 (4th ed. 2002)
 20 (notice is “adequate if it may be understood by the average class member.”). The
 21 notice must set forth the nature of the action, define the class, identify the class
 22 claims and defenses at issue, and explain to class members that they may enter an
 23 appearance through counsel if so desired, that they may request exclusion, and that
 24 any judgment will be binding on all class members. *See* Fed. R. Civ. P. 23(c)(2)(B).

25 Using these principles as a guide, Plaintiff proposes the following plan for
 26 notice, which includes direct mail notice, a settlement website, and notification by
 27 email.

1 **A. Direct mail notice**

2 In this case, because 7-Eleven has addresses for the Class members, notice via
3 direct mail, following a search for any updated addresses, is most appropriate under
4 the circumstances. Here, a postcard summary notice should be mailed to all 57,000
5 class and subclass members. Proposed postcards are attached hereto as Group
6 Exhibit A. The summary postcards generally describe the nature of the action and
7 the claims together with the Class definitions. All other required information appears
8 on the postcards as well.

9 Plaintiff proposes that such direct mail notice be disseminated to the Class and
10 subclass within sixty (60) days of an Order approving this notice plan. Plaintiff
11 future proposes that members of the Class and subclass have 60 days from the date
12 notice is dissimilated to request exclusion.

13 **B. The Class Website**

14 The postcards represent just a summary, however. That is, each postcard also
15 notifies the recipient to visit a website for the lawsuit (“Case Website”) where Class
16 Members can access a traditional “long form” notice as well as other important
17 information about the case, such as the deadline for opting-out of the lawsuit. The
18 website will also host important case documents like the Order granting class
19 certification and will provide contact information for Class Counsel. The Parties
20 agree to meet-and-confer about the specific content of the Case Website before it
21 goes live.

22 **C. Email Notice**

23 In addition to the direct mail postcards and the Case Website, the Parties are
24 meeting-and-conferring regarding the viability of transmitting the postcard notice via
25 email in addition to U.S. mail to email addresses 7-Eleven may have collected with
26 respect to Class Members.

27 **D. Class Administrator**

1 Plaintiff's counsel received multiple bids for disseminating the proposed
 2 notice plan. Plaintiff's counsel recommends that the Court appoint Kurtzman Carson
 3 Consultants, or KCC, for the position as Claims Administrator in this case. KCC has
 4 extensive experience administering class action cases and settlements and would
 5 serve competently here.

6 **III. Conclusion**

7 The Class and Subclass consist of approximately 57,000 persons to whom
 8 direct mail notice should be sent. Combined with a Class Website and potential
 9 email notice, the proposed Notice Plan is calculated to apprise the Class Members of
 10 these proceedings and their rights, comports with due process, and should receive the
 11 Court's approval.

12 **WHEREFORE**, the Plaintiff, Eduardo Munoz, respectfully requests that the
 13 Court adopt the instant Notice Plan, require that notice be disseminated to the Class
 14 and subclass within 60 days of its Order, and award such additional relief as it deems
 15 necessary and just.

16
 17 Respectfully submitted,

18
 19 Dated: January 10, 2018

Eduardo Munoz, individually and on behalf
 20 of all others similarly situated,

21 By: /s/ Patrick H. Peluso
 22 One of Plaintiff's Attorneys

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Certificate of Service

I hereby certify that, on the date indicated below, the foregoing document (and any attachments or accompanying documents) was served via the Court's electronic filing system.

Dated: January 10, 2018

/s/ Patrick H. Peluso